

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

DEKALB FARMERS MARKET
DECATUR, GEORGIA

RESPONDENT.

)
) CONSENT AGREEMENT AND
) FINAL ORDER

)
) DOCKET NO. CWA-04-2016-503(B)

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HEARING CLERK
OFFICE OF REGIONAL COUNSEL
OFFICE OF REGIONAL COUNSEL

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has, pursuant to Region 4 delegation 2-52-A, delegated this authority to the Director of the Water Protection Division of the EPA, Region 4 (“Complainant”).

II. Allegations

3. Dekalb Farmers Market (“Respondent”) is a corporation duly organized and existing under the laws of the State of Georgia and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a construction site known as Dekalb Farmers Market Expansion (“Site”) located at 3000 East Ponce De Leon Ave, in Decatur, Georgia.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES permit program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Georgia, through the Georgia Environmental Protection Division ("GAEPD"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. GAEPD issued the Authorization to Discharge Under *The National Pollutant Discharge Elimination System Stormwater Discharges Associated With Construction Activity For Stand Alone Construction Projects*, Permit No. GAR100001 ("Permit") in accordance with the Georgia Water Quality Control Act (O.C.G.A. Code Sections 12-5-20 et seq., 1964), the Georgia Rules and Regulations for Water Quality Control, Chapter 391-3-6, and the CWA. The Permit was effective September 24, 2013, and shall expire on July 31, 2018. Coverage under the Permit is obtained by submission of a Notice of Intent ("NOI") to GAEPD.

8. The Permit is a Georgia statewide NPDES general permit governing stormwater point source discharges associated with construction activities including clearing, grading and excavation activities except operations that result in the disturbance equal to or greater than one acre of total land area which are not part of a larger common plan of development or sale.

9. On December 5, 2013, Respondent submitted an NOI to GAEPD requesting coverage under the Permit at the Site. The Permit became effective on December 20, 2013, and will expire on July 31, 2018, and requires Respondent to comply with all provisions of the Permit.

10. The Permit includes the following provisions:

- a. Part III.C.2 of the Permit requires the implementation of at least four (4) Best Management Practices ("BMPs") listed for all construction sites discharging into an Impaired Stream Segment.
- b. Part III.D.1 of the Permit requires BMPs for all construction activities and requires implementation in accordance with the design specifications contained in the *Manual for Erosion and Sediment Control in Georgia* published by the State Soil and Water Conservation Commission, as of January 1st of the year in which the land disturbing activity was permitted, to prevent or reduce the pollution of waters.

- c. Part III.D.3 of the Permit states that the failure to properly design, install or maintain BMPs shall constitute a violation of the Permit for each day on which such failure occurs.
- d. Part IV of the Permit requires that an Erosion, Sedimentation and Pollution Control Plan (“Plan”) be designed, installed and maintained; must be prepared by a design professional; and must include, at a minimum, BMPs, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation. The Plan must be certified by a design professional and must contain a certification that the design professional has inspected the site.
- e. Part IV of the Permit requires the Plan to identify all potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges from the construction site. The Plan shall describe and the applicable Permittee shall ensure the implementation of practices which will be used to reduce pollutants in stormwater discharges and assure compliance with the terms and conditions of the Permit. The applicable Permittee must implement and maintain the provisions of the Plan.
- f. Part IV.C of the Permit requires the Plan to be amended whenever there is a change in design, construction, operation or maintenance which has a significant effect on BMPs or if the Plan proves to be ineffective in eliminating or significantly minimizing pollutants.
- g. Part IV.D.3.a.3 of the Permit requires the Plan to contain a temporary or permanent sedimentation basin for common drainage locations, providing at least sixty-seven (67) cubic yards of storage per acre drained, or equivalent control measures, until final stabilization of the site. When the sediment basin fills to a volume of at most twenty-two (22) cubic yards per acre for each acre of drainage area, the sediment shall be removed to restore the original design volume and the sediment must be properly disposed. Perennial and intermittent waters of the State shall not be used for temporary or permanent sediment detention.
- h. Part IV.D.4.a.6 of the Permit requires the inspection reports performed in compliance with the permit to include the name(s) of the certified personnel performing the inspection, the date of the inspection, construction phase, major observations, and corrective actions taken.

11. On September 9, 2014, representatives of the EPA, in conjunction with GAEPD and DeKalb County, performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at the Site to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26 and the Permit.

12. On February 10, 2015, the EPA issued a Notice of Violation (“NOV”) to Respondent for violations of the CWA and the Permit observed by the EPA during the CSWEI and requested that Respondent contact the EPA to schedule a Show Cause Meeting.

13. On March 12, 2015, a Show Cause Meeting was held between the EPA and Respondent to discuss the alleged violations in the NOV. At the Show Cause Meeting, the Respondent provided documentation of how they had addressed some of the various deficiencies alleged in the NOV.

14. On March 26, 2015, the EPA issued an Information Request under Section 308 of the CWA, 33 U.S.C. § 1319, to Respondent requesting additional information.

15. Based on the CSWEI and review of the additional information provided by Respondent in response to the 308 Information Request and in the Show Cause Meeting, the EPA has determined that the Respondent has failed to comply with the CWA, its implementing regulations, and the Permit as follows:

- a. The following BMPs at the Site were not constructed in accordance to the *Manual for Erosion and Sediment Control in Georgia* in violation of Part III.D.1 of the Permit:
 - i. Portions of the silt fencing along the western border of the Site was observed to have been either toppled or with sediment exceeding ½ of the height of the fencing;
 - ii. Channeling was observed under the silt fencing near the stockpile the south end of the Site;
 - iii. Portions of silt fencing along the western border of the Site were not given the required minimum of 10 ft. of setback from the base of the slope;
 - iv. Diversions along the northeastern portion of the Site leading to Temporary Pond 1 were not constructed with the appropriate shape or properly stabilized;
 - v. The stormdrain inlet along the western border of the Site did not have adequate inlet protection at the time of the inspection;
 - vi. The rock check dams in the diversions leading to Temporary Pond 1 were neither constructed with the appropriate shape nor with rock of the appropriate size.
- b. Respondent failed to operate in compliance with the approved Plan as follows in Violation of Part IV of the Permit:

- i. Continuous silt fencing was not maintained along the perimeter of the site;
 - ii. Slope stabilization was not implemented in various areas of the site including the soil storage piles, along the western side of the site near the neighboring apartment complex, and around the future building foundation.
- c. Respondent failed to implement the following BMPs listed in the Permit in violation of Part III.C.2 of the Permit:
 - i. Mulch filter berms, in addition to silt fencing, were not used on the Site perimeter wherever construction stormwater could be discharged.
- d. The following inconsistencies were observed between the Site and the Plan demonstrating that the Plan neither identified all potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharges from the construction site nor been amended to reflect significant changes to BMPs in violation of Part IV of the Permit:
 - i. Areas along the perimeter of the Site where silt fencing had been removed, in the areas near Pond 2 and the western border of the Site near the neighboring apartment complex, were not reflected in the Plan;
 - ii. Additional diversions installed along the northeast corner of the Site leading to Temporary Pond 1 were not in the Plan;
 - iii. An additional stormdrain inlet, which was not identified in the Plan, was observed along the western border of the Site near the neighboring apartment complex;
 - iv. Rock check dams were installed in the diversions along the northeast side of the Site which were not identified in the Plan;
 - v. Additional soil storage areas were observed along the south and east borders of the Site which were not identified in the Plan;
 - vi. An additional entrance to the Site was observed along the eastern border of the Site which was not reflected in the Plan.
- e. The minimum sediment storage capacity of 67 cubic yards per acre was not available for the northern portion of the Site in violation of Part IV.D.3.a.3 of the Permit.

- f. Records of weekly inspections performed at the Site neither included the name nor signature of the certified personnel performing the inspection in violation of Part IV.D.4.a.6.

16. Therefore, Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the Permit.

17. On September 30, 2015, the EPA and Respondent finalized an Administrative Order on Consent, Docket No. CWA 04-2015-4779, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), whereby the Respondent agreed to perform certain injunctive relief to address the above violations.

III. Stipulations and Findings

18. Complainant and the Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

19. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

20. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

21. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

22. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

23. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein and in the Administrative Complaint to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

24. Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

25. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that forty-one thousand two hundred fifty dollars (\$41,250) is an appropriate civil penalty to settle this action.

26. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

27. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
NPDES Permitting and Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

28. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

29. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing

rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

30. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

31. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

32. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO and in the Administrative Order on Consent.. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein.

33. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO or in the Administrative Order on Consent.

34. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

35. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

36. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

37. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CA/FO.

38. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service related to this proceeding:

For Complainant:

Wilda Watson Cobb
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9530

For Respondent:

Mr. Robert W. Blazer
DeKalb Farmers Market
3000 East Ponce De Leon Avenue
Decatur, Georgia 30030

39. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a Consent Agreement and proposed Final Order based on comments received during the public comment period.


40. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

41. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:



James D. Giattina
Director
Water Protection Division
U.S. EPA, Region 4

Date: 7/14/16

For the RESPONDENT: DeKalb Farmers Market



Robert W. Blazer
DeKalb Farmers Market

Date: 5/17/2016

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

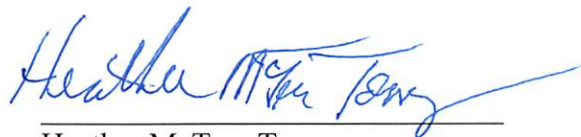
IN THE MATTER OF:)
)
DEKALB FARMERS MARKET) CONSENT AGREEMENT AND
) FINAL ORDER
3000 East Ponce De Leon Ave)
Decatur, Dekalb County, Georgia)
)
RESPONDENT.) DOCKET NO. CWA-04-2016-4503(b)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: July 26, 2016



Heather McTeer Toney
Regional Administrator

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Dekalb Farmers Market, **Docket No. CWA-04-2016-4503(b)** (filed with the Regional Hearing Clerk on August 1, 2016) was served on Aug 1, 2016, 2016, in the manner specified to each of the persons listed below.

By hand-delivery:

Ms. Wilda Cobb
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Mr. Robert W. Blazer
DeKalb Farmers Market
3000 East Ponce De Leon Avenue
Decatur, Georgia 30030

Mr. James A. Capp, Chief
Chief, Program Coordination Branch
Georgia Environmental Protection Division
2 Martin Luther King Jr., Drive, S.E.
East Floyd Tower, Suite 1452
Atlanta, Georgia 30334-9000

for Claudette Honey
Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511